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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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# No. 355

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HARVEY COAL CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA,
*Respondent.*

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## PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

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The petitioner desires briefly to reply to the respondent's brief in opposition to the petition for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit in order to correct and clarify some of the respondent's statements.

On page 4 of the respondent's brief under the heading "Statement", the claim for abatement upon which the decision in this case turns is mentioned. Immediately following, there appears this sentence:

> "Concerning the claim for abatement, a letter from Harvey Coal Corporation, by C. H. Harvey, President, to the Commissioner of Internal Revenue, dated March 17, 1925, gives the following further information (R. 137):
>
> 'The officers of this company decided that this claim for abatement be filed * * *.'"

The natural implication is that the claim for abatement referred to in the taxpayer's letter of March 17, 1925, is the one which was filed July 24, 1919. However, the particular claim for abatement referred to in the letter dated March 17, 1925, is one which the Harvey Coal Corporation sought to file at the time it received notice in January, 1925, that the Collector was demanding the payment of additional tax for 1917, and is the one last mentioned in the previous paragraph of its letter. Until January, 1925, it had no knowledge of any proposed additional tax liability for 1917, much less, the claim for abatement filed July 24, 1919. Furthermore, respondent fails to quote correctly from the record (R. 137) when it states that the officers of the company "decided" instead of "desired" that the said claim for abatement, referred to above and in its letter dated March 17, 1925, be filed.

The same letter dated March 17, 1925 (R. 137), is the basis for a distorted statement of fact under "Argument" on page 7 of respondent's brief. There, reference is made to "the fact that taxpayer left the files regarding the tax with the lessee." The letter dated March 17, 1925, does not say that the taxpayer *left* the files with the lessee but states simply that "all of the files regarding same (*i. e.*, the additional tax) was in their hands."

The respondent's brief at pages 7-8, seeks to distinguish *Commissioner* v. *Bryson*, 79 F. (2d) 397, from the case at bar. In so doing, it is pointed out that in the *Bryson* case, the Commissioner was emphatically put on notice that he was dealing with someone who did not presume to act for the taxpayer, whereas, in the instant case, the lessee was obligated under the lease to pay taxes. The inference to be gathered from this attempted distinction is that because of the lease, the Commissioner was not put on notice that in dealing with the lessee he was dealing with an unauthorized representative of the taxpayer. The complete answer to

the attempted distinction on page 8 and footnote 4 of the respondent's brief is that by a specific finding of the trial court "the defendant had no notice of this lease" (R. 44).

Without any notice of a lease, the Commissioner had no possible justification for entertaining an abatement claim unless it was filed by the taxpayer. For the same reason, the Commissioner was as emphatically on notice that he should not correspond or hold conferences with anyone other than the taxpayer's accredited representatives nor should he have delayed the collection of the tax.

The last sentence in footnote 5 on page 9 of respondent's brief relies upon the absence of a finding that the Commissioner either knew or should have known that the lessee was acting without authority. Such a "finding" would have been a conclusion of law, which would follow naturally from the fact that the Commissioner had no notice of the lease—a fact which was found (R. 44). Without knowledge of the lease or without express authority from the taxpayer in the form of a power of attorney, the Commissioner knew that under his own regulations he was not privileged to recognize anyone but the taxpayer acting through its own officers. When he did recognize someone other than the duly accredited representative of the taxpayer pursuant to his regulations, he must have known that he was dealing with someone acting without authority.

Respectfully submitted,

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